IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SEVENTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO: 7536 of 2004

Between:

Public Educational Trust, Shankarapuram, B.Kothakota Mandal, Chittoor District, Rep. by its Treasurer, Susarla Krishna Murthy, S/o Susarla Dakshina Murthy Shastry, aged 63 years.

..... PETITIONER

AND

1. Government of Andhra Pradesh, Higher Education Department,
Rep. by its Principal Secretary, Secretariat, Hyderabad.
2. The District Collector, Chittoor District.
3. The District Vocational Officer, Renigunta Road, Tirupathi, Chittoor District.
4. A.P.E.S. Govt. Junior College, Sericulture Building,
B.Kothakota, Chittoor District, Rep. by its Principal.
5. Regional Joint Director, Board of Intermediate Education, A.P. Kadapa.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or Orders, Direction or directions declaring the decision of the Respondents in shifting the Government Junior College from the village Shankarapuram to B.Kothakota, as arbitrary, illegal and unjustified and to direct the Respondents to construct the building for A.P.E.S. Government Junior College at Shankarapuram Beerangi Revenue Village in accordance with the Original sanction dated 30--6-1980 or in the alternative to direct the Respondents to return the Corpus Fund of Rs.2 Lakhs and the land of 13 Acres in favour of the Petitioner.

Counsel for the Petitioner: MR.V.SRINIVAS

Counsel for the Respondent No.4: MR.S.S.PRASAD

Counsel for R1 TO 3 and 5: GP FOR HIGHER EDUCATION

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION No.7536 of 2004

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ORDER:

Petitioner, a charitable institution, with a view to cater to the needs of the students in and around Shankarapuram Village, made a request to the Government to start a Government Junior College at Shankarapuram. After complying with the necessary formalities as per the directions of the concerned authorities, it deposited the Corpus Fund of Rs.2,00,000/- and purchased Acs.12.00 of land in the name of and donated Ac.1.00 of land in favour of the Government. Thereafter, Government established a junior college at Shankarapuram during the academic year
1981-82 as per G.O.Ms.No.884 dated 31.08.1981, which was functioning there till the academic year 2000-01. Due to various reasons Government shifted that junior college for Shankarapuram to B.Kothakota through G.O.Ms.No.176 dated 14.12.2000.

2. Petitioners filed this petition primarily for declaring the action of the Government in shifting the junior college from Shankarapuram to B.Kothakota is arbitrary, illegal and unjustified and consequently for a direction to shift the college to Shankarapuram or in the alternative to return the Corpus Fund of Rs.2,00,000/- and re-transfer the Acs.13.00 of land to it.

3. While admitting this petition, a learned single Judge directed the Collector to consider the representations of the petitioner and submit a report expeditiously. But, till now, no report is submitted by the Collector, but from the averments in the counter affidavit filed on behalf of the respondents by the 5th respondent (Regional Joint Director of Intermediate Education, Kadapa), it is clear that Government has no

intention to shift the college from B.Kothakota to Shankarapuram, for the reasons mentioned therein.

4. The main contention of the learned counsel for the petitioner is that since petitioner was made to deposit an amount of Rs.2,00,000/- towards Corpus Fund and was made to purchase Acs.12.00 of land and was made to donate Ac.1.00 of land to the Government only for the purpose of establishment of a Junior College in Shankarapuram village and since it is now clear that respondents have no intention to run the college at Shankarapuram, and had taken a decision to continue the college at B.Kothakota, which is far away from Shankarapuram, respondents cannot retain the Corpus Fund and the land that was purchased and gifted in the name of the Government and have to return the Corpus Fund and re-transfer the Ac.13.00 of land in favour of the petitioner.

5. The contention of the learned Government Pleader is that since the college, which in fact was established at Shankarapuram, could not run due to lack of strength i.e. constant falling of student strength every year, and since the very same college after its being shifted to B.Kothakota picked up the strength, as there are 16 High Schools in that area, shifting of the college from B.Kothakota to Shankarapuram is not feasible and since the purpose which the land was gifted and purchased, and the amount was deposited in the name of the Government was accomplished and since that very same college in fact is being run at B.Kothakota, question of returning the amount deposited by the petitioner and re-transferring the land to the petitioner does not arise.

6. From the counter affidavit filed by the 5th respondent on behalf of the respondents, it is seen that the Junior College established at Shankarapuram due to the efforts made by the petitioner was shifted to B.Kothakota due to constant fall in student strength (probably because of the students being put to the necessity of a bus change to go to Shankarapuram) and that it picked up student strength after its being shifted to B.Kothakota, as there are 16 High Schools feeding that college at B.Kothakota. Therefore, it is clear that the respondents would not shift the junior college, initially established at Shankarapuram due to the efforts of the petitioner,

from B.Kothakota to Shankarapuram. From the counter affidavit of the 5th respondent it is seen that the trustees of the petitioner provided sheds of Sankaraiah Choultry for running the classes when the junior college was formed at Shankarapuram. So, it is clear that Ac.1.00 of land was donated and Acs.12.00 of land that was purchased by the petitioner in the name of the Government remains unused. Petitioner admittedly purchased and donated that land, and made the deposit of two lakh rupees only for the purpose of establishing the junior college at Shankarapuram, but not at any place in the Mandal in which Shankarapuram is situate. Depending on the need, Government has a duty to establish junior colleges. Keeping in view the fact that there are 16 High Schools in and around B.Kothakota and since the student population picked up strength enormously after its being shifted to B.Kothakota, it is clear that there is a need for junior college at B.Kothakota, and so Government would have had to establish a junior college at B.Kothakota, even if the junior college located at Shankarapuram is not shifted to that place. So, by taking a decision to continue the college at B.Kothakota, Government has not done any favour to the petitioner, and had in fact committed a breach of the promise made to the petitioner that it would establish a junior college at Shankarapuram if it were to deposit Rs.2 lakh as Corpus Fund and makes available Acs.13.00 of land.

7. When Government has no intention to shift the college from B.Kothakota to Shankarapuram, and has no intention to establish another Junior College at Shankarapuram, it ought to return the amount of Rs.2,00,000/- deposited by the petitioner towards Corpus Fund and re-transfer Acs.13.00 of land more so because it is not the case of the Government that it agreed to establish the college at Shankarapuram only as a temporary measure and with a condition that it can shift it to some other place.

8. In the facts and circumstances mentioned in the counter affidavit filed on behalf of the respondents it can be inferred that respondents are pleading frustration of the contract due to unforeseen circumstance of the students not joining the college for various reasons. In Pollock and Mulla's 'Indian Contract & Specific Relief Acts' by Nilima Bhadbhade (2001 Edition) at pages 1307 to 1309, the author, after referring to several decisions of various High Courts, observed:

> **"FRUSTRATED CONTRACTS**
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> If a contract stands frustrated, having become impossible of performance, the party who has received benefit under the contract is liable to return it to the other. In

England, where a contract becomes impossible of performance by the destruction of the subject matter or the failure of an event or state of things contemplated as the foundation of the contract to happen or exist (see on s 56 above) the rule, as laid down by the Court of Appeal in 1904, was that not only were the parties excused from further performance, but that they acquired no rights of action, so that each must bear any loss or expense already incurred, and could not recover back any payment in advance. This was not the law in India. The present section appears to include such cases so far as they fall within s 56, and not to lay down any special rule with regard to them. It would seem, therefore, that the general rule of this section applies to such cases, and that each party is bound to return any payment received. Where the voyage was abandoned because of government prohibitory orders, a suit to recover freight paid in advance was held governed by s 65.

Even in England, the House of Lords in the *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* ([1943] AC 32) overruled the court of Appeal decision in *Chandler v Webster* ([1904] 1 KB 493) and held that advance payments were recoverable, provided there had been a total failure of consideration. The learned authors of this book expressed the view that justice could most nearly be done by treating such payments as returnable, but allowing to either party compensation for anything reasonably done by him towards performance, whether the other party actually derived any advantage from it or not, but considered that the Indian rule would not yield this result unless the courts were prepared to take the bold step of applying s 70 to acts done under an express contract at the time subsisting. The English Law Reform (Frustrated Contracts) Act 1943, has modified the rule laid down in the *Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd* in many respects, and achieved a solution similar to that advocated by the learned authors, but certain types of contract are expressly excluded from its operation."

In view of the above legal position, since respondents have no intention to shift the college from B.Kothakota to Shankarapuram, they are bound to return the amount of Rs.2,00,000/- and
re-transfer the land of Acs.13.00 to the petitioners.

9. Hence, rejecting the primary relief sought in the petition, respondents are directed to refund Rs.2,00,000/- (rupees two lakhs only) deposited by the petitioner towards Corpus Fund and re-transfer Acs.13.00 of land to the petitioner as expeditiously as possible, at any rate within a period of three months from the date of receipt of a copy of this order. In default, petitioner is entitled to interest at 9% per annum from the due date up to the date of payment. No costs. The writ petition is disposed of accordingly.

(C.Y.Somayajulu, J.)

Date:17-03-2005.

Cvrk

To

1. The Principal Secretary, Government of Andhra Pradesh, Higher Education Department, Secretariat, Hyderabad.
2. The District Collector, Chittoor District.
3. The District Vocational Officer, Renigunta Road, Tirupathi, Chittoor District.
4. The Principal, A.P.E.S. Govt. Junior College, Sericulture Building, B.Kothakota, Chittoor District.
5. The Regional Joint Director, Board of Intermediate Education, Kadapa.

6. 2 CCs to The Government Pleader for Higher Education, High Court Buildings, Hyderabad. (OUT)

7) 2 CD copies.

8) 1 CC to MR.SRINIVAS (OPUC)